

House Committee on Transportation and Infrastructure
Full Committee Markup
Statement of U.S. Rep. Michael A. Arcuri
July 1, 2010

Thank you Mr. Chairman, I have an amendment at the desk.

Mr. Chairman, my amendment does nothing more than level the playing field under the Clean Water Act by taking away a special exemption that was given to the oil and gas industries back in 2005. A provision of the Energy Policy Act of 2005 – an unfair sweetheart deal for the oil and gas industry that exempts the industry from having to get stormwater discharge permits when they construct drilling sites. I might add, an exemption that does not exist anywhere else in the construction industry.

Construction activities can contribute more sediment to streams than would otherwise be deposited over several decades, causing physical and biological harm to our lakes, rivers, streams and bays. It is baffling to think that construction and development projects in any other industry are required under law to get a permit from EPA that covers stormwater management during construction to ensure that our streams, lakes and rivers remain clean. However, in the oil and gas industry, we exempt it.

Think about that for a second... Say you're a farmer building a new barn – you need a permit from EPA before you can begin building even a small barn on your property. Say you're a small town or city looking to build a business park – you need a permit from EPA. Or say you're a homebuilder and building a new subdivision, or for that matter, building a single home – you need a permit for EPA. All of these forms of development and construction require a stormwater runoff permit from EPA to certify that while they are in the construction process, they have a stormwater management system in places that protects against contamination from harmful chemicals.

I'm sure the opposition will argue – this is more regulation, and they are right it is. I think thus far that this fast track mentality in the gas and oil industry is what has put us in the position we are in today. We've heard these same arguments many times before. But for a moment, let's consider the

environmental catastrophe we have in the Gulf of Mexico right now. Members of this Committee heard testimony just this month about how the Minerals Management Service allowed BP to self-certify that the blow-out preventer would work in deep water. And we learned that BP only conducted testing at 1,000 feet and thought it would work at 1 mile below sea level. Well, BP was wrong, and now we're suffering the consequences.

By allowing the oil and gas industry to construct drilling and exploration sites without a stormwater runoff permit, we're essentially assuming the oil and gas companies will take the necessary precautions to prevent unnecessary runoff and erosion from the construction site from getting into our rivers and streams. I didn't like self-certification for deep water drilling and I don't like this exemption for stormwater run-off for constructing on-shore drilling rigs either.

The district that I represent in Upstate New York is fortunate enough to have part of the Marcellus Shale formation, which has a huge supply of natural gas. Development of this natural gas has the potential to bring tremendous economic benefit to the State and to this fairly rural region, but I always say that we must be absolutely careful that we don't rush or fast-track the natural gas extraction in a way that threatens our greatest natural resource – our abundant supply of clean water.

In New York, as with much of the area over the Marcellus Shale, the gas wells will be built in rural areas – on idle farmland or in forested areas. That's even more troubling, when you consider the degree to which runoff increases on construction sites in those areas. The rate of sediment runoff from construction sites is typically 10 to 20 times greater than the runoff rate from agricultural lands and 1,000 to 2,000 times greater than the rate from forest lands.

Thankfully, New York State has taken a more cautious approach than some of our neighboring states that are also above the Marcellus Shale. New York, under its own environmental laws, intends to require companies to have stormwater management plans in place in order to construct wells in the Marcellus. New York already requires these measures for construction of traditional, vertical gas wells.

However, my amendment is necessary so the Clean Water Act ensure that all states require these measures – so that we have a level playing field across all states; because runoff water does not recognize nor stop at state borders.

New York is one of the states, along with Pennsylvania, Maryland, Virginia, Delaware and the District of Columbia, where EPA is developing and implementing total maximum daily loads (TMDLs) for pollutants that impair the water quality of the Chesapeake Bay. Farmers and towns and villages with municipal water systems in my district are concerned that the TMDL – that is, strict limits on pollution and sediment – for the Bay will require them to implement costly new systems and practices to prevent the runoff of sediment and other pollutants into the watershed. If we continue to exempt the oil and gas industry – which is already constructing wells all across the watershed – from permitting requirements for stormwater discharges, it will place even greater burden on our farms and local taxpayers' water system rate payers.

Mr. Chairman, I urge all members to support my amendment to repeal this unique oil and gas industry exemption from the Clean Water Act. I have received a number of letters in support of my amendment from groups such as the National Wildlife Federation, Sportsmen for Responsible Energy Development, American Rivers, Clean Water Action, EARTHWORKS, Environmental Working Group, Environment America, Natural Resources Defense Council, the Sierra Club, The Wilderness Society and many more.

I ask unanimous consent to submit these letters into the record.

Thank you. I again urge members to support the amendment and I yield back.

###